

OLC 78-0399/44
DDA

DDA 78-1193/1

21 March 1978

MEMORANDUM FOR: General Counsel

ATTENTION :

FROM :

Assistant for Information, DDA

SUBJECT : Proposed Intelligence Charter Legislation - Title II

REFERENCE : Multiple addressee memorandum from [redacted]
dtd 15 March 1978, Subject: S. 2525 - Proposed
Intelligence Charter Legislation - Title II
Restrictions (OGC 78-1620)

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1. The issues paper attached to reference has been reviewed by the Offices of the DDA which concur in general with the positions taken on the provisions of Title II. A few suggestions and comments follow.

2. Section 211 provides "general principles" governing the collection of information concerning U.S. persons and foreign persons within the U.S. Elsewhere in part (B), various collection techniques are specified in different sections, including Sections 215 and 222. The lists of techniques cited do not in every case include both national agency checks and police checks. We believe that whenever authorizable techniques are listed both these methods should be included. It might be more efficient to include a list of authorized investigative steps as part of Section 211.

3. Section 221 is the subject of issue #36 which includes the proposed addition of a requirement that information collected under the authority of Section 221 should be destroyed after one year if the subject of the collection is not actually used as a source of assistance. We understand that this addition is designed to make the legislation consistent with the procedures being developed for collection and retention of information under Executive Order 12036. We would prefer to see the legislation provide for controls over the use of the information rather than controls over the length of time it can be retained.

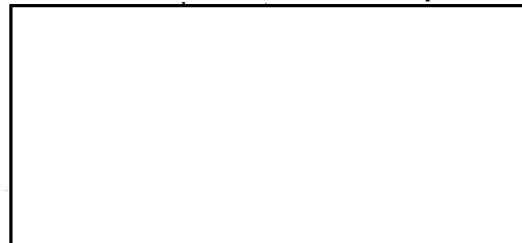
4. Section 222 was alluded to above. If the decision is made to include in each subsection of 222 a list of authorized collection techniques, it is imperative that both subsection (b) and subsection (c) authorize police checks and national agency checks.

5. Section 245 provides in subsection (b) for cooperation "with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities...and conducting background checks on applicants for employment." We believe that this authorization should be extended to cover cooperation with law enforcement agencies "in the course of conducting investigations authorized by this Act."

6. Section 253 is the subject of issue #51 which suggests the addition of either "maliciously" or "recklessly" as a qualification for the phrase "authorizes or engages in." Elsewhere in the OLC and OGC commentaries on the charter legislation there has been an effort to delete adverbial qualifiers of this kind. We wonder whether subjective judgment about the absence or presence of "malice" or "recklessness" should be required by the language of the charter legislation.

7. These comments aside, the positions proposed in the attachment to reference have DDA support.

cc: AD-M/NFAC
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OLC Chrono

OLC 78-1039/1

17 March 1978

DDA

MEMORANDUM FOR: John F. Blake
Deputy Director for Administration

THROUGH: [redacted]
Associate Director-Management/NFAC
[redacted]
Deputy Director of Personnel

FROM: [redacted]
Assistant Legislative Counsel

SUBJECT: Authority for Training of Certain Employees

REFERENCE: Memorandum from Acting Director of Personnel,
Same Subject, dated 7 March 1978

1. The suggestion by the Office of Personnel that we should seek to obtain statutory authority to provide training or education for certain employees whose employment is terminated for certain purposes has merit. As a matter of fact, this office has been considering just such a proposal; a paper providing possible statutory language is attached.

2. The intelligence charter legislation--S. 2525/H.R. 11245--certainly would be an appropriate vehicle for such a proposal. We are just now finalizing an issues paper on Title IV (the Agency charter), and will consider the training proposal in that context. Yet another possibility would be to consider including this sort of provision in an authorization bill, since we will now be subject to the authorization procedures. We will stay in touch with all concerned Agency components on this matter

Attachment

Distribution:

Orig - Addressee

1 - OLC Subject
✓ - OLC Chrono

OLC:RLB:sm (17 Mar 78)

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LEGISLATION TO PROVIDE TRAINING FOR
CERTAIN PERSONNEL SEPARATED FROM THE
CENTRAL INTELLIGENCE AGENCY BY THE
DIRECTOR OF CENTRAL INTELLIGENCE

Certain employees of the Central Intelligence Agency, because of the unique mission and requirements of the Agency, are at a serious disadvantage in seeking private employment once their careers with the Agency have ended. In many cases, these employees possess job skills which are not readily marketable outside the Agency. Other employees are in a difficult position because security considerations prohibit their presenting an accurate picture of their job experiences and capabilities. The legislation proposed below would make these employees of the Central Intelligence Agency eligible, under certain conditions, for up to the full-time equivalent of two years of training in order to make them competitive with job seekers outside the Agency. Among the conditions for eligibility are that the person's employment is terminated by the Agency for reasons, such as a reduction in force, which do not reflect unfavorably on performance and that the employee not be immediately eligible for retirement.

The Central Intelligence Agency, like the Civil Service and the military, has the authority to make separation payments to some employees. The purpose of those payments is to help the former employee relocate following termination, generally involuntary, of his career in Government or the military and to ease the transition into a new job. The purpose of the training permitted by the language proposed below is different -- to assist employees in developing a skill which will enable them to make the transition to other employment.

The proposed language is as follows:

"(a) An employee with five years of service with the Central Intelligence Agency whose employment is to be terminated, other than for cause on charges of misconduct, delinquency or inefficiency, may receive not more than the full-time equivalent of two years of training if

(1) the Director of Central Intelligence determines that the employee is at a disadvantage in finding new employment because the nature, circumstance or security requirements of the employee's service are clearly distinguishable from normal Government employment; and

(2) the employee does not qualify for immediate retirement benefits.

(b) During the period of training under this section, the employee shall be --

(1) retained at his last assigned grade and rate of pay;

(2) entitled to each increase in rate of pay provided by law or regulation; and

(3) excluded from staffing limitations otherwise applicable.

(c) The Director of Central Intelligence shall prescribe such regulations as necessary to carry out this section."

5 U.S.C. section 3381 provides a precedent for this type of payment in the case of air traffic controllers. Like the Central Intelligence Agency employees who would be covered by this proposed legislation, air traffic controllers have a job skill which is not readily marketable outside the Federal Aviation Administration. They are thus provided with training once they can no longer perform the duties of an air traffic controller.

EXECUTIVE ORDER NO. 11559

Apr. 1, 1971, 36 P.R. 6343

DELEGATION OF FUNCTIONS TO CIVIL SERVICE COMMISSION

By virtue of the authority vested in me by section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, it is ordered as follows:

Section 1. The United States Civil Service Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 3378 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, "Assignments to and from States" of chapter 33 of that title [this chapter].

(b) The authority of the President under section 235(a) (4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2234(a) (4)) (section 235(a) (4) of Title 50, Appendix, War and National Defense), and as affected by Reorganization Plan No. 1 of 1955 (72 Stat. 1729) [set out in the Appendix to this title], relating to social standards on the merit basis.

Sec. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 12582 of July 29, 1971, as amended [set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

RICHARD NIXON

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary of Transportation has determined—

- (1) he is medically disqualified for duties as a controller;
- (2) he is unable to maintain technical proficiency as a controller;

or

- (3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

- (1) retained at his last assigned grade and rate of basic pay as a controller;
- (2) entitled to each increase in rate of basic pay provided under law; and
- (3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Department of Transportation;
- (2) released for transfer to another Executive agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 529 of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105(a), 4107(a) and (b), and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

Added Pub.L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.

Effective Date. Section 10 of Pub.L. 92-297 provided that: "This Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting provisions set out as notes under this section and section 8333 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972]."

Report to Congress. Section 9 of Pub.L. 92-297 provided that: "The Secretary of Transportation shall make a report to Congress of his operations under the amendments made by this Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting

provisions of section 8333, repealing section 8332, shall include effectiveness needs of program system, and the Secretary shall make his report after the [May 16, 1972].

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for section 8336 of this title may be separated from the Secretary of Transportation determined controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic;
- (3) the preservation of the physical of controller.

Chapter 75 of this title does not apply to a controller under this section. Separation under this section shall be without the consent of the controller, until the last day of the month following the day the controller receives a notification by the Secretary under this section, or, if a notification is issued by a board of review under section 3383 of this title, the last day of the month in which the notification is issued, whichever is later. A controller who is to be separated is entitled to training under section 3381 of this title. A controller who elects to receive training under this section shall become final until the last day of the month of his training.

Added Pub.L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.

Effective Date. Section effective on the 10th day after May 16, 1972, see section 10 of Pub.L. 92-297.

§ 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination of the Secretary of Transportation under section 3381(a) shall be furnished a written notice of the determination, and a notification that the controller may file a request for reconsideration of the determination within which to file a request for reconsideration of the determination. Unless the controller files a request for reconsideration within the 15 days, or unless the determination is reconsidered within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination after his receipt of the written request filed by the controller under section (a) of this section, the Secretary shall refer the matter to a board of review, consisting of—

- (1) a person designated by the controller;
- (2) a representative of the Department of Transportation designated by the Secretary; and
- (3) a representative of the Civil Service Commission designated by the Chairman, who shall serve as chair of the board.

(c) The board of review shall review evidence submitted by the controller and the Secretary and shall make a determination of the Secretary.